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EXEMPLARY DAMAGES FOR UNAUTHORIZED SURGICAL OPERATION PERFORMED IN GOOD FAITH.—Under the common law, juries were originally the sole judges in awarding damages. By the end of the eighteenth century, they were limited in actions on contract and for injuries to property, to giving actual compensation. But where damages were complicated by personal suffering or outraged feelings, they could be adequately estimated only by the jury; the courts refused to review the verdict on the ground of excessive award and approved the jury's liberal finding as given for example's sake. Sedgwick on Damages, §§ 349, 350, and cases cited. The doctrine is now generally accepted that, in tort actions, exemplary damages may be given where the injury has been inflicted with malice, oppression, wantonness, fraud, gross negligence, or reckless disregard of another's rights. *Tillotson v. Cheetham* (N. Y. 1808) 3 Johns. 56; *Day v. Woodworth* (1851) 13 How. 363. The object of such damages is to punish the defendant and to deter others from like conduct. *Cutler v. Smith* (1870) 57 Ill. 252. And the amount properly depends upon the degree of the defendant's moral turpitude or atrocity. *Milwaukee R. R. v. Arms* (1875) 91 U. S. 489.

Malice, in its legal sense, is found in the commission of "a wrongful act done intentionally without legal justification or excuse." *Bromage v. Prosser* (1825) 4 B. & C. 247; *Wiggin v. Coffin* (1836) 3 Story 1. This, though sufficient for the purposes of the criminal law to support an indictment for murder, 1 Hale P. C. 455; *Commonwealth v. York* (Mass. 1845) 9 Metc. 93, 104-7; or libel, *Commonwealth v. Snelling* (Mass. 1834) 15 Pick. 337; or an action for malicious prosecution, *Wills v. Noyes* (Mass. 1832) 12 Pick. 324, is clearly distinguished from malice in fact. In the case of injuries to property, exemplary damages would seem to rest on malice in fact or upon what is deemed its equivalent, a wanton disregard of the rights of others. *Willis v. Miller* (1886) 29 Fed. 238. Mere intention to do an unlawful act with knowledge of its unlawfulness, is not a sufficient ground. *Wilkinson v. Searcy* (1884) 76 Ala. 176; *Connor v. Sewell* (1896) 90 Tex. 275. So too in actions for libel, exemplary damages are allowed for actual malice, *Bennett v. Smith* (1880) 23 Hun 50, or for a reckless disregard of the rights of others. *Times Pub. Co. v. Carlisle* (1899) 94 Fed. 762.

The question as to whether a different rule applies for injuries to the person was presented in a recent Illinois case. A patient put herself under the care of a surgeon, who, knowing she would not consent to a serious operation, gave her anæsthetics and then performed the operation in the hope that it would bring relief. The court allowed exemplary damages on the ground that the defendant's act was wilful, malicious, wanton, and reckless. *Pratt v. Davis* (Ill. 1905) 37 Chic. Legal News 213. There was clearly no actual malice present. Justification may perhaps be found for this remarkable decision on the ground that the law regards the right to personal freedom and integrity as sacred. 3 Bl. Com. 120. An intentional violation of this right without excuse may easily be deemed a reckless and wanton disregard of another's rights. The principal case is important as being apparently the first decision on a trespass not excusable, as saving human life, Pollock on Torts, 146, committed with good motive and with professional judgment, but intentionally against consent.